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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,308	01/14/2004	Giuseppe Piemontese	71264	3503

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MCGLEW & TUTTLE, PC  
1 SCARBOROUGH STATION PLAZA  
SCARBOROUGH, NY 10510-0827

EXAMINER

KIM, EUGENE LEE

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/757,308

Applicant(s)

PIEMONTESE, GIUSEPPE

Examiner

Eugene L Kim

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-14 is/are rejected.
- 7) ☐ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yamamoto et al (#4,584,817). Yamamoto et al show the method and apparatus comprising: two support structures 34, 44 each provided with seats, means to transfer the capsules from the first to second movable support wherein the second movable support means 44 has more seats than the first support 34.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 6, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto in view of Crossley et al (#3,978,640). Yamamoto et al show two platforms that are superimposed as the platforms are aligned with openings to prevent the capsules from being dropped from the apertures. Yamamoto et al show the use of

Art Unit: 3721

compressed air to release a capsule from the upper platform to a lower platform.

Yamamoto et al do not show the platforms revolving around a vertical axis. However, Crossley et al teach the concept of circular platforms rotating around a vertical axis to dispense capsules from an upper to lower platform wherein upper platform has aperture 92 and lower platform has aperture 27. The upper platform has a fixed table to allow the capsule to drop from the upper to lower platform as shown in figure 5. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Yamamoto with platforms rotating about a vertical axis as taught by Crossley et al as an alternative means to transport products as known in the art.

5. Claims 2, 3, 7, 11, 12- 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. Yamamoto et al actually show the capsule being vertical in the first platform 34 and horizontal in the second platform 44. Yamamoto et al also show actuating means via compressed air vacuum means to release the capsules from the apertures to drop the capsules and to change the orientation of the capsule. Yamamoto et al show rotary distributor disk 52 immersed in solution that is used to provide the solution onto the capsule means. However, Yamamoto et al show the solution being on the second platform and not the first platform as claimed. The examiner notes that it has been held that there would be no invention in shifting locations of elements since the operation of the device would not be modified. See in re Japikse, 86 USPQ 70 (CCPA 1950). Yamamoto et al do not show the orientation of the capsule being horizontal in the first platform and vertical in the second platform. However, the actual orientation of the capsule solves no stated problem and it would

Art Unit: 3721

have been an obvious to orientate the capsule in a platform in any desired manner as a matter of engineering design choice. See in re Kuhle, 188 USPQ 7 (CCPA 1975).

Regarding claim 13, examiner takes official notice that it is well known in the art to use microprocessors to synchronize elements.

6. Claims 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene L Kim whose telephone number is 571 272-4463. The examiner can normally be reached on Tuesday-Friday 8 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**EUGENE KIM**  
PRIMARY EXAMINER